

Sewage Handling and Disposal Advisory Committee

June 11, 2010

Draft Meeting Minutes

Attendance:

<u>Member Attendees</u>	<u>Non-Member Attendees</u>
Todd Benson	Dwayne Roadcap
Bob Lee	Marcia Degen
Valarie Rourke	Jim Bowles
Barrett Hardiman	Jeff Lake
John Harper	Bob Hicks
Joel Pinnix	Duke Price
Ray Freeland	Scott Currie
V'lent Lassiter	Duke Price
Bill Keeling	Anish Jantrania
Rob Wadsworth	Bob Mayer
Bill Timmons	Chris Beatley
Colin Bishop	
Barrett Hardiman	
James Hall	
David Fridley	
Allen Knapp	

Agenda, additions or changes, none offered, accept motion to approve, agenda approved.

Copy of 4/23/10 minutes, look through them. Additions or changes? None offered. Motion to approve, moved, approved.

New Business:

Planning to continue future meetings at the Perimeter Center. Open meeting requirements of the APA make it very difficult to have remote site access.

Bob Hicks introduced Deputy Commissioner for Community Health Services Jeff Lake.

Dwayne Roadcap discussion of VDH fees: The budget bill approved fee increases that will take effect on July 1, 2010. The fee increases will cover general funds that were cut from environmental health services. Environmental Health services' budget was cut 3.7 million in general funding. The approved new fees offset the general funding cut. The new fees start July 1, 2010. The code of Virginia establishes some fees, right now in Title 32.1, it

states that fees for construction permits will be \$75.00; however, the budget bill allows a different fee charge.

Jeff Lake: Budget bill trumps all other legislation. The fees were in the introduced budget bill (Kaine administration). Fees are tied to the cost of doing business but are not a complete recapture of those costs. VDH did an analysis of costs and submitted its analysis to the Department of Planning and Budget (DPB). Local governments have authority to charge fees and those fees may be significant charges in some cases.

Dwayne Roadcap- we also looked at fees in North Carolina and Maryland. We can't do direct apples to apples comparison because fees in those states are set by localities in those states. What I can say is that the new fees are comparable or less than many counties in North Carolina and Maryland. The Commonwealth and VDH do not charge for subdivision review- unless an applicant requests certification letters or construction permits. The fees are as follows:

Onsite Sewage and Well Application Fees
Effective July 1, 2010

Application Type	Fee
Certification letter, no OSE/PE documentation (no charge for well)	\$350
Construction permit for onsite sewage system only, no OSE/PE documentation	\$425
Combined well and onsite system construction permit, no OSE/PE documentation	\$725
Certification letter with OSE/PE documentation, $\leq 1,000$ gpd	\$320
Certification letter with OSE/PE documentation, $> 1,000$ gpd	\$1,400
Construction permit for only onsite sewage with OSE/PE documentation, $\leq 1,000$ gpd	\$225
Construction permit for only onsite sewage with OSE/PE documentation, $> 1,000$ gpd	\$1,400
Combined well and onsite system construction permit with OSE/PE documentation, $\leq 1,000$ gpd	\$525
Combined well and onsite system construction permit with OSE/PE documentation, $> 1,000$ gpd	\$1,700
Private well only, with or without OSE/PE documentation	\$300

The new fees more closely reflect the cost to the Commonwealth for processing applications.

No application fees are charged for repairing a failing onsite sewage disposal system or for replacing a well.

Applicants whose family income falls below the Federal Poverty Guidelines are eligible for waiver of the above fees.

Proof of income is required.

VDH does not have separate charges for inspections, rabies investigations, enforcement activities, complaint investigations, etc. Number of applications is down from where we were several years ago and fees now represent a greater percentage of program funding

Rob Wadsworth- confirming, there are no state fees for subdivisions? Yes, correct. What about permits under Title 32.1-163.6? If the developer gets the permit, why can't it be transferred to the builder?

Dwayne Roadcap- construction permits are not transferrable and there was a discussion of that concept. VDH needs to know who the owner is because that is the person responsible for the property, sewage system, and well. Owners can list agents and the regulations define owner as someone who proposes to own.

Why can't VDH have a fee for changing the name? If the fee is more than \$225, there must be a local fee attached. VDH has not had any historical allowance for "changing the name" fees.

Joel Pinnix- now that we have 12VAC5-613, why can't we issue certification letters under 163.6? The section on certification letters says we can issue certification letters that are regulatory compliant—designs must comply with Title 32.1-163.6 so they are now compliant with Emergency Regulations. As a result, we should issue certification letters.

Dwayne- VDH is not looking at Title 32.163.6 of the Code that way now. The Code for 32.1-163.6 says that VDH will only consider construction permits.

Allen Knapp- if the committee is interested in this issue, then we (the committee) can look at it. The committee is here to advise the Department and the commissioner. Joel is making essentially a legal argument. From a purely technical perspective, there appears to be some risk in the long term that an owner down the line may not be able to find an engineer who would design a system for that site; but again, this is something we can look at.

Barrett Hardiman- as an industry representative, I'd like to see some streamlining of the process that will allow transfers among different entities that are involved in the building process.

Joel Pinnix- I'd like to see the permit validity period increased to maybe 3 years. Increasing the valid period makes sense. Some kind of transfer fee makes sense. Charging \$50 fee to transfer within period of validity would take a lot of pressure off of developers.

Todd Benson- I'd like to see a proposal from members of this committee and in time for VDH to respond before the next meeting.

Mike Lynn- I think we have a permitting structure that is outdated and based on what happened 30 years ago. Most other permits are issued to the licensed individual who will do

the work. I would like to see a useful proposal prior to the next meeting so VDH could respond. I've stated this before on alternative systems: the whole process is based on 30-year old cases where one person dealt with the whole issue. I don't know any other agency that issues a permit to the owner. Other agencies issue permits to contractors, etc. The owner does not have a clue of what is going on.

For certification letters for HB1166 designs: doing work to validate the site for some kind of onsite treatment works, if PE does detailed design, when it comes time later on to convert the certification letter to a permit, then the owner of record must submit a design package, true whether it's done under 610 or 613. All it does is validate a site. PE may do something more intensive for a certification letter, whatever the PE submitted may no longer be relevant and it can be dealt with when the construction permit is requested. I don't see an inordinate risk, it would be nice to have this group look at addressing this problem. Transferring permits, sometimes you have multiple LLCs set up, one for development, one for building, perhaps a close relationship for an industry. I would like to see this be considered by the advisory group to work on. I would like to see the construction permit extended to 3 years, especially since the industry is stressed, increasing the validation period makes sense, creating a transfer fee would make sense for a like kind project, If we need some enabling legislation, then we should propose that. It would take a lot of pressure off of the builders. If this group could work on it, then that would be helpful.

David Fridley- we have discussed three different topics- If we work on this, we have 3 issues: (1) is certification letter ok for HB1166 installations; (2) transferability of permits; (3) 3-year validity period for a construction permit. **Joel, Rob, and Barrett, and Mike will work to put something together for the bigger group.**

The next meeting may not be the best time because of our anticipated work with this committee in July. As a point of interest, the 18-month valid time frame for a construction permit is in the code and the permit can be extended for another 18-month period.

Danna Revis was supposed to be here but she's very busy, we are getting ready to do a major training effort, VDH's current plan for training on the emergency regulations involves various elements. VDH had a video-conference with staff; we are in the process of developing a set of talking points. We have a guidance manual with FAQs, that's been distributed to this group and EH Managers along with some talking points; hoping to have an E-learning exercise to cover some of the different concepts; we have set the schedule for face-to-face training with our staff, which starts on Monday. We have 6 dates set for VDH staff only, full day in each location, have 250 people signed up; the meetings will go on 3 days next week and 3 days the following week, we are asking the local folks to schedule meetings with the contractors and designers in their area, take the message out to them, all of these activities will help us to gather more questions, we will probably revise answers to the FAQs. That's where we are now, this is a big program, 60,000 owners of alternative systems need to be found and informed, we hope to have a different philosophy for the ones that have already been permitted; we will try to find them and notify them of their responsibilities. For

the owners with new systems, we can be more aggressive, tell us who your operator is before you get OP. We will be talking about all of these issues in the training sessions.

Regarding the implementation manual, I've read it many times. Does anyone have any comments or questions? If so, I don't know that I can respond or fix it, Dave Tiller has primary responsibility for the FAQ and implementation manual so future revisions will go through him.

Bob Lee: The comments that we made before about the implementation manual and FAQ document are not in here and we have not been informed about why they were not included.

Allen Knapp: Ultimately, it's our responsibility to develop how the program works.

Bob Lee: It was little feedback that you received. I can't understand why our comments couldn't have been handled in this final document, especially on the one question of authority and law, it says in here that pump & haul is not a wastewater treatment works. I take issue with that, a treatment works defines a storage tank, if it is not a treatment works, then how you can regulate it?

Allen Knapp: It's not appropriate to debate matters of law in this forum. The Commissioner sets the direction of the program. The feedback is "we don't agree."

Bob Lee: The issue is how you identify that it does not fall into that category. I provided an alternative to the approach in the document, it would have worked.

Allen Knapp: I can't debate it with you. It is a legal definition and how code is interpreted.

Comment from committee member (unknown): What's the end result of the different opinion?

Bob Lee: It potentially sets VDH up for challenges to issue a permit for any pump & haul that exists. If it is not a treatment works, the 610 regs do not cover pump and haul. The guidance manual says P&H does not apply because it is not a treatment works.

The emergency regulations and guidance document are for alternative systems. Pump and Haul is not an alternative system. The 610 regs address pump and haul and VDH has authority to regulate.

On Page 5 of the document, looking at the flowchart in the middle: there is a side note for application submitted under 32.1-163.6. The note refers to Table 1 of the emergency regulations, problem is the E-Regs in Section 70.B, there is a concise statement, if you don't include statement, then it will be reviewed under the 610 regs, the only people who can do designs is PEs, that's statutory. The flowchart is contrary to the regulatory framework that has been set up. Ok, we will take this issue back to Dave Tiller, one of things about this

program, we are not here to tell OSEs what they can do, I appreciate the comments. If you have significant comments about the guidance manual, then please send them to Dave Tiller.

Does anyone else have an issue with the guidance manual? Yes, I would like to say this is a good document. I've read it. I thought it was fairly clear and concise.

One of my concerns, it identifies what's in the rule, but it doesn't provide guidance for the staff. How will the rule be implemented? I don't see the 2nd and 3rd steps. What do you do when you get a sample back and it's not good? What do you do with it? That kind of instruction would be more important with a well developed program. Bob Lee has valid point: the guidance reflects the newness of our program and the tight time to get something done.

I think the HD has done a fantastic job, it's been a lot of work and VDH spent a lot of time doing all of this, this is not easy and not a task that many could do. I think they have done a great job, the committee's job is to keep providing them with support.

Marcia Degan: Regarding sites where we suspect a flooded condition: Valarie Rourke, Vincent Day, and I met on this issue. The important things are this: DEQ raised the question as to whether some designs require a discharging permit. DEQ is running that issue down on the legal side. How can we be sure that we are not working in wetlands? On all of these sites we have professionals working who can follow-up on whether the sites are wetlands. This goes to the assumption that DEQ has the authority to require discharging systems for systems discharging into wetlands and groundwater. We have other sites that are flooded for extended periods of time. How do we verify whether they will be a flooded condition, as we move into the final regs, we can flush this out more. We are really trying to be consistent on looking at wet sites.

Allen Knapp: This topic came from VACO, question by Ted McCormack, VACO getting pushback from counties where AOSS installed in wetlands, concern that we are not protecting the environment adequately. Let's be clear: it is not the E-regs that have allowed systems to go into wet sites, it was done by Title 32.1-163.6. Those designs are only subject to performance requirements and the other requirements of the statute. The E-regs were to establish performance requirements for all types of sites, including those with shallow watertables. I hear a lot that the VDH regulations have allowed systems to go into wetlands and so everyone wants to beat up on VDH. The regulations are a pretty good shot and start to get where we need to go, we have some problems, as we move along, we will get more clarity on the technical issues. It was the legislation that allowed these systems to go in wet sites. DEQ is asking for more information on sites with less than 12-inches and DEQ is looking at its permitting authority for alternative systems in wet sites. The permanent regulations may have more requirements for wetlands and wet sites. It's not that VDH made it possible. VDH is just trying to address the situations when they arrive under Title 32.1-163.6.

I'm confident after talking to agency attorneys that DEQ has jurisdiction on these sites. If we do determine that, will we have a discussion? Permitting authorities, etc., Yes, that conversation needs to take place. VDH can't permit wetlands, that's in DEQ's authority.

At what point is it considered a direct discharge? DEQ is trying to figure that out. Not all limiting features are water. It's not that we are putting into the regs less than 12-inches, it may require more research.

I think this is an extremely important issue. EPA is losing its patience with Virginia. It is a direct discharge, you can confirm it with case law, in dealing with federal authorities, we need this issue addressed. This committee, perhaps should recommend a legislative change.

Where is the watertable, at the surface? Or, above the surface? This is one of those topics that will be up for discussion.

I think it may be an intended or unintended consequence, a table that states TL-3 + disinfection, you end up with a bunch of systems with disinfection that are not working and create false sense of security. This is a lot different from VDH's prior program through GMP #147.

We need to make sure that we are doing what we are supposed to do to protect the environment. To inform the discussion, in the final report from IEN, in the online survey the committee split 50-50 on whether engineered systems should meet the same vertical offset separations. The committee also split on whether swamps, wetlands, etc, should have been added as a required setback to protect public health.

I think O&M is critically important, especially when you are designing systems in a sensitive and fragile receiving environment. I'm dismayed that the O&M portion of these regs are where they are. The regs and VDH's program should be further along. I would think that O&M should be paramount. The VDH website is not up and running for reporting O&M results. VDH knew this was coming three years ago when the legislation was passed, to put in perspective, during ad-hoc committee, Jantrania submitted Reneau study, 18-inch offset only gets you what you want half the time, an engineered system with dispersal and treatment is superior, but must recognize that getting O&M is critically important. It must be inspected and operational. The idea that we can't move the program forward because engineer solutions are less than 18-inches compared to the septic tank system with 18-inch separation is ridiculous. Yes it is in sensitive environment but historical body of work and regs is not all that great either. We are improving the state of practice with engineered systems.

We must recognize that disinfection and O&M is something we haven't resolved with our discharging systems. From studies and results on discharging systems, we find something not working right on an annual inspection most of the time. Those systems should have operator looking at them every 6-months. We have to be careful, it can be done from engineering perspective; the question is how well it can stay that way.

Dwayne Roadcap: We commissioned a study through the Weldon Cooper Institute, some of those results were surprising, did not track with the conventional wisdom. We are hoping to get the final report from Weldon Cooper next week. We will share with the committee. Found some interesting things. The rate of failure between a conventional and alternative system over a 6-7 year time frame was the same. There was a 20 percent greater likelihood that an alternative system owner would have a problem compared to a conventional system owner even though the rate of failure was the same. Seventy percent of owners reported that their alternative systems were being properly operated and maintained, even inspected. This was surprising, because if true, then 70% of the time people are doing what we would like to see happen absent a regulation. There seemed to be a high level of awareness about sewage systems among the owners. Most people received information about their system from friends, family, contractor—not the health department. That was surprising. Don't hold me to the percentages since I'm working from memory.

Permanent Regulation Development Discussion:

Dwayne Roadcap: Comment period for NOIRA for ERegs recently ended and the summary of comments are available here today for your review. We would like to talk about what VDH plans to do to implement permanent regulations. We are taking recommendations from the comment period, recommendations from this committee and its sub-groups, and specific ideas from staff to determine whether we want to make changes and what changes are needed.

Regarding the timeline, let me work backwards. The emergency regulation is valid 12 months. The regulation expires April 7, 2011.

The Board of Health (BOH) meets Jan 14, 2011. If we have final regulation approved then, then the Department of Planning and Budget (DPB) has 14 days to review it, the Secretary has 7 days, and the Governor has unlimited time for review. If BOH approves a final regulation on Jan 14, 2011, then we could file the regulation with the Register by March 20, 2011 (if everything meets deadlines for review) and published by March 30.

To make things happen by Jan 14, we must have proposed regulation ready by Aug 1. If submitted to DPB, they have 45 days to review, Secretary has 14 days, Governor has no limit—about 2.5 months for review at a minimum. We can file proposed regulation by Oct 20, 2010. Registrar would publish for comment on Nov. 8, there would be a 60 day comment period ending Jan. 5. BOH meets Jan 14.

So, we must have a proposed regulation written, reviewed by attorney general's office, and have the Commissioner act on behalf of Board of Health to approve the proposed regulation before August 1, 2010. We must have proposed regulation written well before Aug 1, 2010 to allow for review. We have between now and July to write proposed regulation.

Typically, the Department of Planning and Budget tells agencies they are halting review of regulations in anticipation of the General Assembly session. DPB usually stops regulatory reviews in November. The law allows for 6 month extension of emergency regulations if approved by the Governor. If DPB does what it has historically done, then it won't be possible to have the proposed regulation reviewed in November and December 2010. The 6-month extension could be requested if review of the proposed regulation is halted in anticipation of the general assembly session.

We will form technical advisory committee (TAC), which will be this group plus some additional participants (VRWA, VA WEF, VA Chapter of WWA, VDH ODW). TAC meetings are scheduled July 9, 14, 16, beginning at 10AM. Right now, the meetings are scheduled to be at OEHS conference room, will ask about using DPOR facilities. You should anticipate all-day meetings. We don't have many options for dates. Aug 1 is a tight deadline.

Now that the timeline and membership of the TAC is known, the next question is what should the TAC talk about? We looked at the Institute for Environmental Negotiation (IEN) report for emergency regulations and the issues that were not settled or not addressed through that process. The emergency regulations incorporate most of consensus issues, but there were some things the IEN group didn't get to. We also have other comments from the NOIRA published to indicate VDH's intent to draft permanent replacement regulations.

VDH offered the advisory committee topics for the July TAC meetings by revisiting the IEN report and using topics that were not addressed or were without consensus. In addition to those topics, the advisory committee brainstormed additional topics for TAC consideration.

After the topic areas were identified, each member of the advisory committee was given two green dots and three gold dots. The green dots represented the two most important issues for that particular committee member. The gold dots represented important issues to that member, but were not considered as their most important. The topics and weighting were as follows:

1. Should the replacement regulations more completely address protection of groundwater? Should the replacement regulations allow direct discharge of treated effluent into groundwater and wetlands? What is VDH and DEQ's authority with respect to alternative systems discharging into wetlands and groundwater? **15 Green Dots, 9 Gold Dots**
 - i. Should the replacement regulations include nitrogen loading for small alternative systems? Should the replacement regulations be modified with respect to nitrogen loading for large alternative systems (e.g., flow based, eliminate dilution at higher flows)? **1 Green Dot from the total**

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11. Should the replacement regulations require bonding for large alternative systems? 3
Gold Dots

12. Should the replacement regulations require renewable operating permits? **No Dots**

13. Should the replacement regulations have different standards and performance and design requirements for existing alternative systems? **No Dots**

Additional comments:

Are we going to create a new definition? The term “pollution” is already defined in the code, the term pollution is defined. We should not change that definition. Should define the parameter the rule will use to determine or assess whether pollution takes place.

Pollution = misplaced resources

Is fail/safe a construction standard? For example, when an aerator goes bad, will the system be prohibited from discharge? I like the phrase, “effluent by-pass protection.”

In our subcommittee group, I think we had a general consensus to include a matrix table with soil morphology and Ksat. If you included an organic loading rate instead of TL-2 and TL-3, would the regulation allow septic discharges via organic loading rate? One of the recommendations of the subcommittee was to develop the regulations such that there would be a performance section and a prescriptive section.

For systems designed 15-20 years ago, should the regulations change standards for them? What is the performance standard for the systems installed prior to implementation of the emergency regulations?

Barrett Hardiman asked VDH to send the above topics in an email to the advisory committee so members could share the topics and results with their respective organizations. Another person asked about the status of VDH’s NOIRA to replace the Sewage Handling and Disposal Regulations and whether some of that effort could be incorporated into this regulatory initiative. Allen Knapp responded that VDH has not stopped working on the other NOIRA and that VDH could only address issues related to alternative systems as discussed in the NOIRA that was published with the emergency regulations. Knapp also noted that VDH had no news on the indemnification fund regulations, the civil penalty regulations, or the fast track well regulations. All of those regulatory initiatives were under Secretary review. Knapp stated that VDH has communicated the civil penalty regulations are a priority to implement the regulations.

I thought there was some issue with the language about what you could issue some tickets for, it was a terminology that was changed in the emergency rule because the compliance rule was in place before that.....I’m looking at the final version of the civil penalty regulation, Was that related to Sandra Gentry’s comment? She was the only written comment that we received. I don’t know, can’t do anything about it right now, reg is under review, if

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approved, it will be approved as is. Guess we would have to fix afterward. Essentially can't have different regulation reviewed at different levels of the game.

Any other business before the Committee? No, meeting adjourned. Future meetings dates set for July 9, 14, and 16 to develop the permanent replacement regulation.

Sewage Handling and Disposal Advisory Committee
Virginia Department of Health
Draft Agenda – June 11, 2010

Administration

- Call to Order
- Approve Agenda
- Review and approve minutes from April 23, 2010

New Business

1. Changing fees for onsite sewage applications- Dwayne Roadcap and Deputy Commissioner Jeffrey Lake
2. Emergency Regulations-
 - o Training for VDH staff- Danna Revis
 - o Implementation Manual and FAQs- Allen Knapp
 - o Clarification re: sites with shallow water tables, wetlands- Allen Knapp
 - o Other?
3. Permanent Regulations-
 - o Timeline and outline of VDH plan – Dwayne Roadcap
 - o Advisory Committee/TAC (discussion)- Marcia Degen
 - o What changes/issues do we have for the permanent regulations- what needs to be done to finalize each issue, assign tasks, discuss, and finalize- Bob Lee.
 - o There had been some discussion on adding other parts of the final SHAD rule which were ready to go so it would be good to get determination on that and add it to the scope and time line etc. if it is going to be done- Bob Lee.
4. VDH policy pertaining to licensed individuals
5. Civil Penalty Regulation- status, discussion- Bob Lee
6. Next meeting dates

Old Business

- 1.

Adjourn